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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,273	02/27/2002	Shabbir B. Bambot	SPRX-0067	7112

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EXAMINER

VALENTIN, JUAN D

ART UNIT PAPER NUMBER

2877

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,273

Applicant(s)

BAMBOT ET AL.

Examiner

Juan D Valentin II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. An improper 112 first paragraph rejection was made on claim 17, for the purposes of expediting the prosecution of this application please withdraw the detailed action sent out on 4/16/2003 in favor of the newly submitted detailed action below.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the chamber opening with first and second transparent sides must be shown along with the second transparent side containing the sample while also providing for an aperture through which light from the light source to pass through to illuminate and interrogate the sample must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant defines terminology within the specification when referring to different embodiments of invention. In the claims the Applicant uses the same terminology, but Examiner

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cannot tell which embodiment of the specification the Applicant is claiming. When referring to Fig. 4, on page 6, line 2, Applicant discloses wherein “the chamber 425 has an **opening**...the second side of the chamber also provides for the containment of the sample while also providing for a **window**”. Moving on to Fig. 6, discussed on page 7, line 28, Applicant discloses “directing a light source and the light collection device at the interrogation **aperture** 630 upon which light enters and reflects...and then is collected again through the **aperture**”. While the specification may be enabling for the claim structure of claim 17, it is unclear as to how the claimed **opening** of claim 15 is incorporated with claimed **aperture** of claim 17. Examiner understands that the disclosed “window” is a synonym for the claimed “aperture”, therefore enabling the claim structure for claim 17. For the purposes of clarifying and distinctly claiming the Applicants invention, Applicant is asked to please clear up discrepancies between the specification language and the claim language in order for Examiner and those of ordinary skill in the art to better understand the specific embodiments of Applicants invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-16 and 18-21 rejected under 35 U.S.C. 102(e) as being fully anticipated by Cohen et al. (USPAP 2002/0196435, hereinafter Cohen).

### **Claim 1**

Cohen in conjunction with Fig. 3 discloses, a system for measuring a characteristic of a sample (200), the system comprising a light source (202), a light measuring device (210) and a sample receptacle (100). Cohen further discloses wherein the receptacle receives and emits light from the light source and wherein the emitted light is measured by the light-measuring device [0043].

**Claim 2**

Cohen further discloses in conjunction with Fig. 1C a receptacle comprising a reflective surface (116) and a chamber (128) to store the sample [0032-0033].

**Claim 3 & 4**

Cohen further discloses in conjunction with Fig. 1C at least one layer that comprises an access layer, a channel layer, and a base layer [0032-0033].

**Claim 5**

Cohen further discloses wherein the access layer comprises an opaque reflective surface [0032].

**Claim 6**

Cohen discloses wherein the access layer further comprises a first reflective access opening and a second reflective access opening [0032].

**Claim 7**

Cohen further discloses wherein the channel layer comprises a plurality of channel layer openings coupled in communication with one another [0033].

**Claim 8**

Cohen discloses wherein the plurality of openings is in alignment with the second reflective opening (Fig. 2C, ref. 158 & 160).

**Claim 9**

Cohen further discloses wherein the base layer serves as the protective layer of the receptacle such that the sample does not escape the channel layer after receipt from the access layer. Applicant will be appreciated that the substrate layer (106) reads on the claimed limitation.

**Claim 10**

Cohen further discloses wherein the at least one layer comprises a plurality of layers coupled to one another [0032].

**Claim 11**

Cohen discloses wherein the at least one layer comprises a plurality of layers coupled to one another (Fig. 1C).

**Claim 12**

Cohen further discloses in conjunction with Fig. 1C wherein the first layer comprises a reflective section (116) and the second layer comprise a chamber (128) within.

**Claim 13**

Cohen further discloses wherein the reflective section and chamber are in alignment and in communication with each other [0034].

**Claim 15**

Cohen discloses further in conjunction with Fig. 1C wherein the chamber comprises a chamber opening (128) and a first transparent side and a second transparent side. It is inherent that the channel layer of Cohen has a transparent first and second sides in order for light to be incident on the fluid then reflect back through the channel layer to the light measuring means.

**Claim 18**

Cohen further discloses wherein the receptacle comprises an integrated layer for filtering and analysis [0058].

**Claim 19**

Cohen further discloses wherein the integrated layer comprises an application port, a separation zone, a transport and detection zone, a reflective aspect, a transparent aspect, and an optical filter [0053] & [0055-0061].

**Claim 20**

Cohen further discloses wherein the integrated layer further comprises a reagent [0074].

**Claim 21**

Cohen discloses a method for measuring a characteristic of a sample comprising the steps of illuminating a sample, collecting the illuminated light from the sample, measuring a reflected light from the sample and determining a characteristic of the sample based on the measurement of the sample's reflective and/or fluorescent properties to know properties [0010 & 0031].

Cohen further discloses wherein the sample is contained in a receptacle allowing for the performance of steps (a) - (d) [0031].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen on view of Auad (USPN '783 B1).

**Claim 14**

Cohen substantially teaches the claimed invention except that it fails to show wherein the first layer and the second layer engages with an attachment of the light-measuring device. Auad shows that it is known to provide an attachment means to engage the receptacle to the light-measuring device (col. 7, lines 21-23 & col. 9, line 54-col. 10, line 5) for a fluid analysis system. It would have been obvious to someone of ordinary skill in the art to combine the device of Cohen with the light measuring means attachment of Auad for the purposes of providing a secure stable apparatus.

6. Claim 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen on view of Takase et al. (EPO 0417305A1, hereinafter Takase).

**Claim 16**

Cohen substantially teaches the claimed invention except that it fails to show wherein the first transparent side is also the cover of the chamber. Takase shows that it is known to provide the first transparent side as the cover of the fluid chamber (col. 12, lines 43-48) for a fluid

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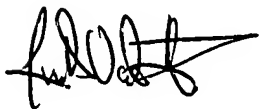
analysis system. It would have been obvious to someone of ordinary skill in the art to combine the device of Cohen with the first transparent side as the cover of Takase for the purposes of providing a way to contain the fluid during fluid analysis.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juan D Valentin II whose telephone number is (703) 605-4226. The examiner can normally be reached on M-Th., Every other Fr..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on (703) 308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308- 0955.



Juan D Valentin II  
Examiner 2877  
JDV  
May 27, 2003



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